

**BOARD OF ELECTION COMMISSIONERS FOR THE CITY OF CHICAGO
AS A DULY CONSTITUTED ELECTORAL BOARD**

Objections of: Gerald Thomas and Constance Sullivan)	
)	
)	
To the Nomination Papers of: Thomas Day)	No.: 16-EB-CON-03
)	
)	Rel.: 16-EB-CON-04
Candidate for the nomination of the Democratic Party for the office of Representative in Congress for the 7th Congressional District, State of Illinois)	
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)	
)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners for the City of Chicago Commissioners Marisel A. Hernandez, William J. Kresse and Jonathan T. Swain, organized by law in response to a Call issued by Marisel A. Hernandez, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections (“Objections”) of Gerald Thomas and Constance Sullivan (“Objectors”) to the nomination papers (“Nomination Papers”) of Thomas Day, candidate for the nomination of the Democratic Party for the office of Representative in Congress for the 7th Congressional District of the State of Illinois (“Candidate”) at the General Primary Election to be held on March 15, 2016, having convened on December 14, 2015, at 9:00 A.M., in Room 800, 69 West Washington Street, Chicago, Illinois, and having heard and determined the Objections to the Nomination Papers in the above-entitled matter, finds that:

1. Objections to the Nomination Papers of the Candidate herein were duly and timely filed.

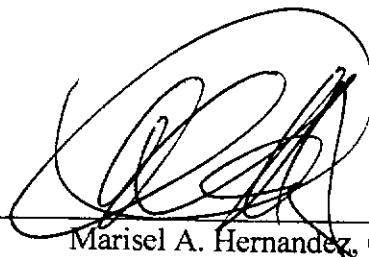
2. The said Electoral Board has been legally constituted according to the laws of the State of Illinois.
3. A Call to the hearing on said Objections was duly issued by the Chairman of the Electoral Board and served upon the members of the Electoral Board, the Objectors and the Candidate, by registered or certified mail and by Sheriff's service, as provided by statute.
4. A public hearing held on these Objections commenced on December 14, 2015 and was continued from time to time.
5. The Electoral Board assigned this matter to Hearing Officer Barbara Goodman for further hearings and proceedings.
6. The Objectors and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Officer on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objectors, Gerald Thomas and Constance Sullivan, pro se; the Candidate, Thomas Day, by his attorneys, Ross Secler and Deborah Moldover.
7. The Hearing Officer has tendered to the Electoral Board his report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be stricken and dismissed and that the Nomination Papers be declared valid.
8. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer report and recommendations is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

9. For the reasons stated above, the Electoral Board dismisses the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

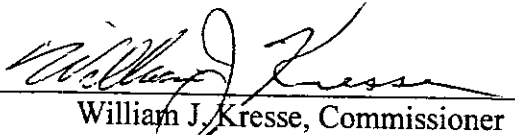
10. The Electoral Board further finds that a similar result was reached in related case 16-EB-CON-04

IT IS THEREFORE ORDERED that the Objections of Gerald Thomas and Constance Sullivan to the Nomination Papers of Thomas Day, candidate for the nomination of the Democratic Party for the office of Representative in Congress for the 7th Congressional District of the State of Illinois, are hereby DISMISSED and said Nomination Papers are hereby declared VALID and the name of Thomas Day, candidate for the nomination of the Democratic Party for the office of Representative in Congress for the 7th Congressional District of the State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on March 15, 2016.

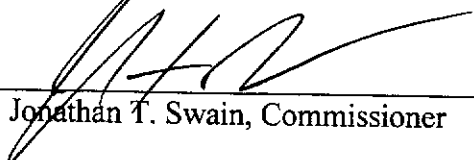
Dated: Chicago, Illinois, on January 15, 2016.



Marisel A. Hernandez, Chairman



William J. Kresse, Commissioner



Jonathan T. Swain, Commissioner

NOTICE: Pursuant to Section 10-10.1 of the Election Code (10 ILCS 5/10-10.1) a party aggrieved of this decision and seeking judicial review of this decision must file a petition for judicial review with the Clerk of the Circuit Court of Cook County within 5 days after service of the decision of the Electoral Board.

**BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
AS THE DULY CONSTITUTED ELECTORAL BOARD FOR THE
HEARING AND PASSING ON OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES
FOR THE MARCH 15, 2016 GENERAL PRIMARY ELECTION**

Gerald Thomas and)	
Constance Sullivan)	
)	
)	
Objectors)	16 EB CON 03
-v-)	(Rel. case 16 EB CON 04)
)	
Thomas Day)	
)	
Candidate)	

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

This matter was first heard on December 14, 2015. The Objectors appeared pro se. The candidate appeared through counsel Ross Secler and Deborah Moldover. The parties were given the opportunity to file preliminary motions. Candidate filed Candidate's Motion to Strike or Dismiss Objectors' Petition, or for other Relief and Objectors filed an Answer thereto.

BACKGROUND

The candidate's nominating papers contain approximately 3,483 signatures. The Objectors filed objections to virtually every signature on at least two grounds, specifically that the signer is not registered and that the signer's signature is not genuine. Some signatures were objected to on additional grounds. Additionally, objections with the identical recapitulation sheets, an identical summary sheet and verbatim allegations were filed in 16 CBOEC CON 04 ("CON 04"). It was clear from a review of the objections in both cases that the summary sheets and the recapitulation sheets were photocopies of each other. However, the objections in CON 04 were filed by two different objectors.

The Candidate filed a Motion to Strike and Dismiss alleging that the objections were

shotgunned and further alleging that the allegation regarding the purported pattern of fraud set forth in Objector's paragraph 10 lacked specificity and should be stricken. In his Motion, Candidate also requested a preliminary showing pursuant to Rule 1(b)(xv) of the Board's Rules of Procedure. Rule 1(b)(xv) provides, "*The Electoral Board may, on its own motion or upon motion of a party, require the Objector to make a preliminary showing that certain of the factual allegations in the Objectors' Petition are pled in good faith based on knowledge, information and/or belief formed after reasonable inquiry and strike any objection or any portion of an objection if it determines that the objection does not meet the requirements set forth in 10 ILCS 5/10-8 or is not well grounded in fact and/or law. Objections to individual signers and/or circulators must consist of a specific objection or objections to that particular signer or circulator.*" In light of the number of specific sheet and line objections submitted in the Objectors' Petition coupled with the fact that a duplicate set of objections was filed by other objectors, a preliminary showing was appropriate and necessary. Accordingly, Objectors were called to testify.

The testimony of Gerald Thomas

Objector Thomas was first called to testify. He stated that the petitions were prepared with the help of his co-Objector and no others. He did not use the registration records to determine whether a signer was registered or whether the signatures were genuine. Mr. Thomas testified that he looked at poll sheets, "walking sheets" and utilized different websites and googled names when preparing the objections. No explanation was offered as to why or how two sets of virtually identical objections were filed in CON 03 and CON 04.

The testimony of Constance Sullivan

Objector Sullivan was next called to testify. She testified that she did not help in the

preparation of the appendix recapitulation sheets. She testified that she never reviewed any registration records to compare the signatures on the petition with those on the registration records. Her role in the Objection process was as clerical support. (Tr. of 12/21/15 at p. 32).

Sample Records Examination

The testimony of the Objectors established that none of the signatures were, in fact, compared to the signatures on the registration records. Therefore, there was an insufficient basis to allow the Objectors to proceed on objections made regarding the genuineness of signatures. Indeed, the testimony served to establish that as it related to the issue of genuineness, there lacked a good faith basis for the Objectors to claim that virtually EVERY signature on the candidate's petition was not genuine. However, the testimony of Gerald Thomas raised the possibility that some investigation was made with regard to the other sheet and line objections. Therefore, a sample records examination was appropriate to ascertain whether the other objections were plead in good faith as required. Accordingly, it was determined that the allegations regarding the genuineness of signatures would not be reviewed in the sample records examination but the other allegations would be reviewed. For the sample, each party offered 10 sheets to review and this Hearing Officer offered an additional 10 sheets for a total of 30 sheets. Thereafter, a sample records examination was conducted.

The results of the sample records examination were as follows: The candidate filed 3,445 signatures and the Objectors alleged that 3,412 signatures were invalid on multiple grounds. 285 objections were ruled on resulting in 197 being overruled and 88 being sustained.¹ After the sample records examination was completed, Candidate filed a Motion to Reinstate Candidate's Motion to Strike and Dismiss Objectors' Petition.

¹ There appears to be a discrepancy in the tallying of the results from CON 03 and CON 04 with respect to the total number of signatures filed and total number of objections filed. However, resolution of these discrepancies would not change the ultimate outcome with respect to Candidate's Motion to Strike.

DISCUSSION

In relation to the sample records examination, it should be noted that the Objectors already had identified what they considered to be their "best sheets" in terms of the objections and were able to offer those sheets to be used in the sample records examination. The Candidate was required to select the sheets randomly and without prior notice. Despite Objectors' offer of their "best sheets", only 88 of the 285 objections submitted in the sample records examination were sustained. The Candidate pointed out in his Motion to Reinstate that extrapolating the results of the sample records examination through the entire nominating petition would result in the Candidate having approximately 2,483 valid signatures, well above the 1,322 needed for placement on the ballot.

It is long recognized that an Objectors' Petition is not to be used as a source of harassment of a candidate or a misuse of the Board's resources. As the Candidate correctly points out in his Motion to Strike and Dismiss, "the Electoral Board should not be required to expend its valuable time and resources, nor the time and resources of a candidate, in engaging in a 'fishing expedition' for an objector who has not spent the requisite time and resources to make a reasonable inquiry of the facts. Entertaining such objections may invite future parties to interpose similar objections for improper purposes, such as to harass candidates, cause unnecessary delay in the preparation of the ballots or in the conduct of candidate campaigns, or needlessly increase the cost of conducting elections." *Derengowski v Lamm*, 96-EB-RGA-1 CBEC, January 17, 1996, affirmed *Derengowski v Electoral Board of City of Chicago*, 96 CO 16 (Cir. Ct. Cook Co. Judge Henry, February 9, 1996). Indeed, Rule 1(xv) of the Board's Rules of Procedure recognizes the need for good faith objections by "requiring a preliminary showing that

certain factual allegations in the Objectors' Petition are pled in good faith based on knowledge, information and/or belief formed after reasonable inquiry".

It is clear from case law that making some inquiry is not the same as making a sufficient inquiry. See, e.g. *McCarthy v Pellet*, 04-EB-WC-04 (Chicago CBEC, 2004). The Objectors in this case failed to provide credible evidence to justify alleging that virtually every signature on the Candidate's nominating petition was invalid on multiple bases. Even more disturbing is the failure of the Objectors to offer any credible explanation as to how identical objections in two different cases by two different sets of Objectors were submitted without any information or documents having been shared between the two sets of objectors. The lack of any plausible explanation makes it impossible to determine who, if anyone, actually undertook an investigation sufficient to support the filing of the objections.

Accordingly, a finding that the objections were not pled in good faith based on knowledge, information and/or belief formed after reasonable inquiry is appropriate here and the objections should be stricken and dismissed in their entirety.

Candidate also contends in his Motion to Strike and Dismiss that paragraph 10 of the Objectors' Petition should be stricken. In paragraph 10 of the Objectors' Petition, the Objector alleges that each and every circulator engaged in a pattern of fraud and false swearing. However, paragraph 10 fails to provide specific reasons therefor. The summary sheet referenced in paragraph 11 which is intended to explain some of the alleged fraudulent conduct of the circulators only addresses conduct of 3 circulators and none of the alleged violations constitute sufficient bases to constitute a pattern of fraud. Accordingly paragraphs 10 and 11 of the Objectors' Petition should be stricken and dismissed for these reasons as well.

Finally, Candidate requests that the Objectors' Petition be stricken and dismissed because

the Objectors' Petition misstates that the Candidate is seeking election rather than nomination to the office sought making the Objectors' Petition legally deficient on its face. Candidate's argument fails to state a cognizable basis to strike the objections and should be denied as to this basis.

CONCLUSION

In light of the foregoing, it is my recommendation that the objections of Gerald Thomas and Constance Sullivan to the nominating papers of Thomas Day be stricken and dismissed and that the nominating papers of Thomas Day for the Democratic nomination to the office of Representative in the United States Congress for the 7th Congressional District be deemed **valid** and that the name of Thomas Day for said office be printed on the ballot at the March 15, 2016 General Primary Election.

Respectfully submitted,



Barbara Goodman, Hearing Officer
1/12/16